IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5690 OF 2004

Smt. Durgabai Pundlik Hegade
(Since deceased through her L/R) ... Petitioner

Vs.

Shri Mahadeo Hari Mahale
(Since deceased through his L/R) ... Respondent

Mr. A.P. Vanarse for the petitioner.

Mr. Amit Sale for respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 11TH JANUARY, 2005.

P.C.:-

1. The petitioner is the heir of the original defendant-tenant. The plaintiff's suit was for possession on the grounds of default in payment of rent, non user and bonafide reasonable requirement of the landlord. Both the courts below have held against the petitioner on the ground of bonafide reasonable requirement of the landlord. During the pendency of the appeal, the written statement came to be amended and the defendants challenged the plaintiff's title. In addition to the finding that the landlord required the premises bonafide for his personal use and occupation, the lower appellate court also held that the appellant has challenged the plaintiff's title and, therefore, on the ground of disclaimer also, the plaintiff was entitled for a decree of eviction.

2. I have heard, at some length, Mr. Vanarse, the learned counsel appearing for the petitioner and Mr. Sale, the learned counsel appearing for the respondent.

3. Mr. Vanarse, the learned counsel for the petitioner contended that both the courts below have erred in holding that the landlord required the suit premises for his bonafide personal use. He submitted that the landlord has purchased a house at Baner and, hence, his requirement cannot be called genuine. The lower appellate court has dealt with this submission. It was observed that after filing of the suit, the landlord has sold the flat at Baner. Sale Deed dated 29/10/1996 is produced on record. The learned counsel also urged that in the year 1992, the deceased plaintiff executed 'Isar Pavati' of the suit premises in favour of one Shantilal Parekh. This indicates that his need is not bonafide and reasonable. I find no substance in this submission also because by notice dated 8/12/1992 the deceased plaintiff cancelled the 'Isar Pavati', which was executed in favour of Shantilal Parekh. In my opinion both the courts have properly considered the evidence and come to the conclusion that the landlord's need is reasonable and bonafide. The aspect of comparative hardship is also rightly considered. Hence, there is no reason to interfere with the concurrent finding of fact. The petition is, therefore, rejected. The learned counsel for the petitioner seeks time to vacate the suit premises. He seeks one year's time to vacate the suit

premises. The learned counsel for the respondent objects. In the circumstances of the case, the petitioner is granted time upto 31/5/2005 on the petitioner's and the members of his family, who are residing in the suit premises, filing usual undertaking in this court within four weeks from today. Needless to say that if within four weeks the undertaking is not filed, the decree will be executed.

(SMT. RANJANA DESAI, J.)